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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIALAMBDA LABS, INC.,  
Plaintiff,  
v.  
LAMBDA, INC.,  
Defendant.

Case No. 19-cv-04060-JST (TSH)

**DISCOVERY ORDER**

Re: Dkt. No. 81

The parties filed a joint discovery letter brief at ECF No. 81, responding to some questions and comments the Court had (ECF No. 80) about a prior joint discovery letter brief (ECF No. 79). The overarching issue with these RFPs is reputational damage. Among its other claims, Lambda Labs alleges trademark infringement by Lambda Schools. One particular harm Labs alleges is that customer confusion between Labs and School harms Labs' goodwill because School's business is a scam. There are some unkind press reports indicating that School's curriculum is deficient, that its claims about job placement for its students are exaggerated and even fraudulent, and that for some students the experience has been so bad they've begun to organize. The present RFPs are targeted at those issues.

In general, School would like the Court to adopt a very narrow theory of relevance that bars inquiry into whether these accusations are true. School reasons that reputation evidence consists of what people think of you, not what they *should* think of you if only they knew the truth. However, the Court disagrees. School's graduates and former students are transmitters of reputation to the market, so if the curriculum is terrible and School's job placement claims are

1       cooked up, that is relevant. Or, at least, it is relevant enough to justify discovery. Down the road  
2       School is free to argue on the merits that whatever Labs dredges up in discovery should be given  
3       less weight if Labs comes up short in demonstrating that some relevant segment of the market ever  
4       learned of these problems. But that's an issue of weight and persuasiveness to the trier of fact, not  
5       a reason to cutoff discovery based on relevance.

6       The main focus of the Court's order at ECF No. 80 was that many of Labs' RFPs seemed  
7       overbroad and others were unexplained. Following additional meet and confer, Labs has mostly  
8       solved this problem. Accordingly, the Court rules on the RFPs as follows:

9       **1. Negative press attention (RFPs 55-60)**

10       Labs argues that the scope of these RFPs is proportional in light of the custodian  
11       agreement and that the senior-level School custodians are likely to have substantive discussions  
12       about these articles, not just chatter. That makes sense. Communications about the negative press  
13       articles may shed light on the extent of reputational injury, and that is relevant to harm to goodwill  
14       if there is customer confusion. Since each of these RFPs asks for documents and communications  
15       about one specific news article, it doesn't seem like producing those items for the agreed-upon  
16       custodians would be burdensome. As for data sources for each custodian, School should search  
17       the sources that are likely to have responsive documents, subject to any agreements the parties  
18       have made. School can interview its own custodians and ask what data sources they use. Neither  
19       side says anything about potential non-custodial sources for these RFPs, and Labs' pitch for why  
20       these RFPs seek relevant and proportional discovery is both the identity (i.e., senior-level within  
21       the company) and limited number of custodians. Accordingly, the Court orders School to produce  
22       custodial documents responsive to these RFPs.

23       **2. Student and employee complaints (RFPs 66-67, 69-73)**

24       RFPs 66 and 67. Labs clarifies that it "seeks documents concerning only the specific  
25       categories of complaints identified in its motion: complaints regarding the quality of Lambda  
26       School's services, curriculum, and instructors; student employment and career placement; and  
27       income sharing agreements." Labs explains that "[t]hese narrowed requests are proportional  
28       because Lambda School only needs to search files collected from the agreed-to high-level

1 custodians and centralized data sources, not the files of everyone who receives or discusses  
2 student complaints.” This narrowing is much better because it focuses on complaints that are  
3 likely to be relevant to School’s reputation in a way that could be relevant to damage to Labs’  
4 goodwill. School is right, of course, that “the complaints Labs seeks are not actually conclusive as  
5 to the quality of education. It is doubtful that any student of any school went through their entire  
6 education and did not have a single complaint about *something*, but that does not mean they were  
7 dissatisfied with their education.” (emphasis original). But evidence does not have to be  
8 dispositive to be discoverable, just relevant and proportional. Also, limiting these RFPs to the  
9 identified custodians (as opposed to, say, every employee) and centralized data sources means that  
10 these RFPs are likely to capture more substantial complaints and complaints that were tracked in  
11 some manner, which adds to their relevance and tends to confirm their proportionality.  
12 Accordingly, the Court orders School to produce documents responsive to these RFPs as narrowed  
13 by Labs in the letter brief.

14 RFP 69. Labs references its arguments made above for RFPs 55-60 for why  
15 communications between senior-level personnel about the Twitter account @LambdaScam would  
16 be relevant and proportional. The Court is persuaded. Labs also tosses in a reference to  
17 centralized data sources for this RFP. However, Labs does not explain what that means or say  
18 anything about why production from a centralized data source about this Twitter account would be  
19 relevant and proportional. In response to the Court’s questions during the hearing, Labs expressed  
20 skepticism that there is a centralized data source that contains responsive documents.  
21 Accordingly, the Court orders School to produce custodial documents in response to this RFP.

22 RFP 70. Labs’ narrowed request is reasonable. These documents are again relevant to  
23 reputation injury, and as narrowed, the RFP is relevant and proportional. As to this and all other  
24 RFPs, the Court expresses no view on the appropriate search terms. The Court orders School to  
25 produce documents responsive to this RFP as narrowed in the letter brief.

26 RFPs 71-73. Labs’ narrowed requests are appropriate. The Court orders School to  
27 produce documents responsive to these RFPs as narrowed in the letter brief.  
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1                   **3. Potential misrepresentations about graduation and employment rates (RFPs 61-**  
2                   **62, 68, 74, 77-80, 84-97, 101)**

3                   RFPs 61-62. The Court appreciates Labs' explanation and orders School to produce  
4                   documents responsive to these RFPs.

5                   RFPs 68 and 74, 78-80. Labs' narrowed requests are reasonable. The Court orders School  
6                   to produce documents responsive to these RFPs as narrowed in the letter brief.

7                   RFPs 84-93. For RFPs 87-88 and 91, the Court appreciates the additional explanation and  
8                   orders School to produce documents responsive to these RFPs. For the remaining RFPs in this  
9                   group, Labs' narrowed requests are appropriate. The Court orders School to produce documents  
10                  responsive to those RFPs as narrowed in the letter brief.

11                  RFPs 94-97. These documents are relevant and proportional. The Court orders School to  
12                  produce them.

13                  RFP 101. The parties report they have resolved this dispute.

14                  **4. RFPs about companies that employ School graduates (RFPs 81-83, 98-100)**

15                  RFP 81 asks for “[d]ocuments sufficient to identify all employers of Lambda School  
16                  graduates or former students.” This is a potentially sprawling RFP, and the Court discussed it  
17                  with the parties during the hearing. If School has reports compiled that list employers of graduates  
18                  or former students, then those are relevant and proportional. But if School does not have this  
19                  information compiled already, assembling it from scratch would be onerous. And that effort  
20                  doesn’t seem proportional to the needs of the case because Labs doesn’t need to know the identity  
21                  of each and every employer of a School graduate or former student to prove its case. School says  
22                  it can provide this employer information without undue burden for employers connected to the  
23                  2019 Student Outcome Report because that information was recently compiled, and School also  
24                  offers to identify any employer who is also a Labs customer. Accordingly, the Court orders  
25                  School to produce the employer information from the 2019 Student Outcome Report and any  
26                  similar reports, as well as any compilations, reports or records of employer information that exist  
27                  in centralized locations. The Court also orders School to identify any employer who is also a Labs  
28                  customer for customers that Labs discloses and so requests.

1 RFPs 82-83, 98, 100. Labs' narrowed requests are reasonable. The Court orders School to  
2 produce documents responsive to these RFPs as narrowed in the letter brief.

3 RFP 99. The parties report there is no longer a dispute as to this RFP.

4 **IT IS SO ORDERED.**

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6 Dated: July 17, 2020

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8 THOMAS S. HIXSON  
9 United States Magistrate Judge  
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